

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Alltel Corporation Petition for Limited Waiver)	WT Docket No. 05-287
of Section 20.18(g)(1)(v) of the Commission's)	
Rules)	

ALLTEL CORPORATION REPLY COMMENTS

Alltel Corporation ("Alltel") hereby replies to comments regarding Alltel's Petition for Limited Waiver of the requirement that CMRS providers using an enhanced 911 ("E911") Phase II handset-based solution achieve 95 percent penetration of automatic location information ("ALI")-capable handsets by December 31, 2005 (the "95 Percent Penetration Rule").¹ Alltel projects it will reach a penetration level of 84-85 percent by year's end and seeks an extension until June 30, 2007 to achieve 95 percent penetration.

Notably, the record reveals minimal dispute as to whether Alltel merits relief from the rule. Both public safety and industry commenters recognize that Alltel has engaged in significant measures to encourage customers to upgrade to ALI-capable handsets. In particular, commenters note Alltel's compliance with all the interim handset benchmarks, its targeted marketing programs to encourage customers to upgrade to ALI-capable handsets, and its E911 education campaigns as important considerations in the Commission's review of the Petition. Commenters also recognize that in contrast to previous E911 benchmark obligations, which involved proactive efforts largely within a carrier's control, the 95 Percent Penetration Rule is

¹ See Public Notice, *Wireless Telecommunications Bureau Requests Comment on Alltel Petition for Limited Waiver of the December 31, 2005 Deadline to Achieve Ninety-Five Percent Penetration of Location-Capable Handsets Among Its Subscribers*, WT Docket No. 05-287, DA 05-2675 (rel. Oct. 7, 2005); Alltel Corporation Petition for Limited Waiver, filed Sept. 30, 2005 in CC Docket No. 94-102 ("Alltel Petition" or "Petition"); 47 C.F.R. § 20.18(g)(1)(v).

contingent upon a consumer's willingness to part with an existing handset in exchange for a new one. As demonstrated in its Petition, Alltel has examined its subscriber base and determined that it includes many low usage customers and analog customers who resist exchanging their handsets for a new model. Alltel's detailed, fact-specific analysis of the "resistant" segment of its customer base addresses each of the factors commenters have identified as relevant for the Commission's consideration in reviewing the Petition.

I. PUBLIC SAFETY AND INDUSTRY COMMENTERS GENERALLY SUPPORT THE UNDERLYING BASIS FOR ALLTEL'S WAIVER REQUEST

Public safety and industry alike agree that Alltel has demonstrated a legitimate basis for waiver of the December 31, 2005 deadline. APCO approvingly notes the "affirmative steps" Alltel has taken "to encourage its customers to upgrade their handsets," and to "highlight[] the E9-1-1 benefits of handset replacement," although it chose not to express a view on the Petition itself.² NENA finds that Alltel provides a "respectable showing" in its Petition and concludes that relief from the December 31, 2005 deadline is appropriate.³ The Executive Director of the North Carolina Wireless 911 Board commends Alltel's "diligent" E911 deployment efforts and points out the "significant measures" Alltel has undertaken "to encourage its subscribers to obtain location-capable GPS handsets."⁴

In response to the CTIA – The Wireless Association® ("CTIA") and Rural Cellular Association ("RCA") petition, APCO urges the Commission to consider "a carrier's affirmative steps to encourage existing customers to replace legacy handsets" as a "a significant factor" in its

² APCO Comments at 6.

³ NENA Comments at 6.

⁴ See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Richard Taylor, Exec. Dir. N.C. Wireless 911 Bd., WT Docket No. 05-287, dated Oct. 20, 2005.

review of requests for waiver of the December 31, 2005 deadline.⁵ APCO sets forth three particular measures, recommending that the Commission examine carriers' efforts with regard to: (i) "consumer education in collaboration with public safety regarding the benefits of E9-1-1 capability"; (ii) "targeted advertising to subscribers with legacy handsets"; and (iii) "special offers of free or low-cost replacements."⁶ As Alltel demonstrated in its Petition, it has undertaken campaigns in all three areas:

- E911 Consumer Education. Alltel has undertaken a number of E911-specific education campaigns. In August and October of this year, Alltel included a bill insert, directed specifically to customers with non-compliant handsets, addressing the E911 benefits of A-GPS handsets and informing customers that they need an A-GPS handset to benefit from Phase II E911 service.⁷ Both bill messages explained how customers can determine whether their phones are GPS-capable. Similar information is provided on Alltel's website, which also directs customers where to find more information concerning whether PSAPs in their areas are Phase II-capable.⁸ Alltel also provides similar information at the point of sale in its own retail stores and at agents' locations.⁹
- Targeted Advertising. Alltel has undertaken a contract renewal program aimed specifically at customers with non-compliant handsets. This campaign highlights Alltel's selection of ALI-capable phones and has entailed both direct mail and text messaging efforts. These efforts are ongoing and similar efforts are planned monthly at least through the second quarter of 2006. Alltel's bill messages also have been targeted at customers with non-ALI-capable handsets.¹⁰
- Special Offers of Free or Low-Cost Replacements. Alltel has provided significant discounts for new handsets, enabling customers to obtain new phones for as little as \$0.99. These offers are available in retail outlets or via Alltel's website. Alltel has also eliminated fees associated with upgrading handsets. Alltel heritage markets offer existing

⁵ APCO at 4.

⁶ *See id.* (citation omitted).

⁷ *See* Alltel Petition at 12-13, and Exhibits D and E. These efforts are consistent with the Commission's own E911 education campaigns. *See* Petition at 16-17, n.41 (noting that "the Commission has implored customers of carriers employing handset-based solutions ... to 'find out whether your phone has E911 location capabilities[.]'" citing FCC Consumer Advisory, "What You Need to Know About Calling 911 From Your Wireless Phone, posted at <http://www.fcc.gov/cgb/consumerfacts/e911.html>).

⁸ *See id.* at 13, and Exhibit F.

⁹ *See id.* at 13, and Exhibit G.

¹⁰ *See id.* at 12-13, and Exhibits B-E.

customers the same lower prices for new handsets as are offered to new customers.¹¹ Alltel also makes available refurbished ALI-capable handsets that all customers may obtain without entering a new contract in its directly owned retail outlets.

Through these efforts, Alltel has eliminated any meaningful hurdles that subscribers could encounter in acquiring ALI-capable handsets and is actively seeking to inform subscribers about the benefits of E911 and the need to have an ALI-capable handset. While APCO expresses no view on Alltel's petition, it nonetheless concludes that "Alltel has taken affirmative steps to encourage its customers to upgrade their handsets, and has highlighted the E9-1-1 benefits of handset replacement."¹² Indeed, APCO expressly encouraged other carriers to engage in similar undertakings.¹³

NENA finds that "Alltel has made a respectable showing" in its request for waiver and states that it "would not object" to a 12-month waiver for Alltel.¹⁴ NENA asserts as a general matter that no waiver should extend beyond one year – "while not foreclosing a further six-month or 12-month compliance interval upon a proper showing."¹⁵ Alltel appreciates NENA's recognition that Alltel's circumstances warrant relief. However, just as case-by-case review of individual carriers' requests is warranted, so is individualized relief, and Alltel's particular circumstances merit an extension of the 95 Percent Penetration Rule beyond the one-year period NENA advocates. Alltel projects that, given its customer base, an extension of the deadline through June 30, 2007 is required even with its ongoing marketing and educational efforts.

¹¹ See *id.* at 12-13, and Exhibits A, B, and H.

¹² See APCO at 6.

¹³ See *id.* at 4 n.3.

¹⁴ NENA at 6-7 (expressing no objection to one-year extension provided Alltel has met the other conditions set forth in the *Stay Order* – which Alltel has).

¹⁵ See *id.* at 6.

NENA further suggests that carriers continue their quarterly reporting to allow the Commission to measure carriers' progress towards 95 percent penetration.¹⁶ Alltel is willing to provide quarterly reports as a useful measure to keep the Commission apprised of Alltel's progress. Further, grant of Alltel's requested relief, together with quarterly reporting, results in a more effective use of Commission resources than compelling Alltel to seek further relief in another year. NENA itself acknowledges that relief beyond December 31, 2006 may be warranted, and quarterly reporting, as NENA requested, ensures adequate Commission oversight of Alltel's progress and compliance efforts.¹⁷

The Kansas 911 Provider's Association expressed blanket opposition to "the petitions of Alltel, Sprint Nextel, CTIA/RCA, and any other wireless provider that has or may file such a petition."¹⁸ It asserts that its members "have seen no effort on the part of the wireless service providers in our various jurisdictions to inform their customer base of the necessity to upgrade their handsets."¹⁹ It also states that "[t]he failure of the wireless providers to encourage or

¹⁶ See *id.*

¹⁷ NENA observes that in April 2005, the Commission granted some Tier III carriers 13-month extensions of the 95 Percent Penetration Rule, through January 31, 2007. NENA at 4 (citing *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems - E911 Phase II Compliance Deadlines for Tier III Carriers*, 20 FCC Rcd. 7709, ¶¶ 58, 71-72 (2005) ("*Tier III Order I*"). Last Friday, the Commission granted five additional Tier III carriers limited relief through October 28, 2006. Order, CC Docket No. 94-102, FCC 05-182 (rel. Oct. 28, 2005) ("*Tier III Order II*"). Alltel's Petition, in contrast, presents circumstances that were simply not at issue in either Order. As a threshold matter, the sheer number of subscribers to be converted to ALI-capable handsets renders compliance fundamentally different. Moreover, Alltel has set forth a clear path to compliance, in contrast to the Tier III carriers who, for example, provided no "specific information regarding the steps they will take to transition analog subscribers to location-capable handsets" or "with respect to their plans to expand digital CDMA coverage." See *Tier III Order II* at ¶ 21. Nor did the Commission have any comparable analysis of customers' "resistance" to such efforts, or any record of monthly improvement in handset penetration to serve as the basis for a meaningful projection of a compliance date, as Alltel has provided. See *Tier III Order I* at ¶¶ 37, 57.

¹⁸ Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Scott A. Ekberg, Chairman, Kansas 911 Provider's Association, in WT Docket No. 05-287, dated Oct. 24, 2005. The Kansas Association's blanket statement against *any* extension (even those *not yet before the Commission*) is contrary to the position of APCO and NENA, as well as the Commission's own waiver standards and its previous actions on Tier III carriers' waiver requests.

¹⁹ *Id.* at 1.

provide any incentives to their customers to upgrade their handsets has directly resulted in their inability to comply with the order of the Commission.”²⁰ As demonstrated above, the allegations are plainly wrong with respect to Alltel – within Kansas and across all of Alltel’s markets – and the opposition to Alltel’s petition should be dismissed. Further, Alltel is surprised by the filing given Alltel’s strong record of compliance and cooperation in deploying Phase I and Phase II in Kansas.²¹ Alltel fully intends to continue working closely and cooperatively with PSAPs to deploy Phase I and II in all its markets, including Kansas, where information available from NENA indicates only 17.14 percent of Kansas PSAPs were Phase II ready as of October 2005.²²

CTIA more accurately addresses Alltel’s circumstances and further supports the merits of the Petition. As CTIA notes, “Alltel has been vigilant in its efforts to comply with the Commission’s rules, has invested significant resources to meet the Commission’s interim benchmarks for deployment of handsets with location capabilities, and has instituted aggressive marketing campaigns to encourage handset replacement.”²³

In sum, the record acknowledges Alltel’s meaningful efforts to reach 95 percent ALI-capable handset penetration and establish a strong basis to grant Alltel’s requested relief.

II. THE COMMENTERS UNDERScore THAT ALLTEL’S UNIQUE CIRCUMSTANCES, TOGETHER WITH ITS FACT-SPECIFIC ANALYSIS OF ITS “RESISTANT” CUSTOMERS, WARRANT RELIEF.

The Commission has acknowledged that the *Stay Order* modifying the E911 Phase II handset obligations for Tier II carriers like Alltel did not make individualized findings, and the schedule imposed therein “was not specifically tailored for them or embodied in individual

²⁰ *Id.* at 2.

²¹ Alltel notes that it recently received a Phase I and Phase II request from Mr. Ekberg (Barton County) in August 2005 and has timely scheduled end-to-end testing there for January 18, 2006.

²² See <http://nena.ddti.net/Reports/report6.asp> (viewed October 31, 2005).

compliance plans.”²⁴ Further, the Commission has clarified that Tier II carriers may face unique circumstances “that may warrant some differences in their treatment.”²⁵ The record underscores that Alltel’s particular circumstances warrant the limited relief requested.

Alltel historically has provided service to rural areas. Although the company has grown, most recently with its acquisition of Western Wireless Corporation, Alltel continues to serve some of the nation’s most sparsely populated regions. Indeed, its network covers approximately 55 percent of the geographic area of the continental United States but only 25 percent of the U.S. population.²⁶ NENA acknowledges Alltel’s unique circumstances, noting that Alltel “exhibits characteristics of both larger and smaller service suppliers in its various territories.”²⁷

The characteristics of Alltel’s subscriber base contribute significantly to Alltel’s ALI-capable handset penetration rate. In an effort to determine how best to target its handset upgrade efforts, Alltel studied subscriber usage and other data and identified the particular characteristics of its customer base that complicate Alltel’s efforts to achieve the 95 percent handset penetration level. Alltel’s request for waiver, therefore, provides a factual analysis of its “resistant” customers and documents the overall slowdown in its monthly improvement of ALI-capable handset penetration. Alltel found that a significant number of the customers with non-AGPS handsets are low-volume customers and analog customers who, for various reasons, (inconvenience, higher-power 3-watt phones for rural areas) are resistant to Alltel’s handset

(...continued)

²³ See CTIA Comments at 2.

²⁴ See Alltel Petition at 10, nn. 18-19 (citing *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, ¶ 36 (2002) (“*Stay Order*”), *aff’d on recon.* 18 FCC Rcd. 21838, ¶ 15 (2003) (“*Non-Nationwide Recon Order*”).

²⁵ *Non-Nationwide Recon Order* ¶ 15.

²⁶ See Alltel Petition at 2.

upgrade efforts.²⁸ As discussed below, the characteristics of Alltel's customer base match the factors many parties identify as relevant for Commission consideration.

Parties commenting on Alltel's request for waiver, and on the CTIA/RCA petition as well, recognized that the 95 Percent Penetration Rule is contingent upon consumers' willingness to upgrade their handsets and that consumer preferences and characteristics are relevant factors in the Commission's waiver review. Alltel identifies below the relevant factors parties identified and Alltel's pertinent findings:

- Lower-than-Expected Churn. Referring to the Commission's decision to impose a December 31, 2005 deadline, NENA asserts that "[a]t that time ... the feasibility of the schedule remained speculative" even as the Commission acknowledged that "customer desires might not match governmental imperatives for wireless caller location."²⁹ APCO acknowledges that lower-than-expected churn is "not irrelevant" as the Commission considers requests to extend the deadline.³⁰ As Alltel demonstrated in its Petition, customer and handset churn has not translated into increased penetration of ALI-capable handsets as quickly as the Commission speculated.³¹ Indeed, Alltel's data indicate that handset upgrades increasingly involve the exchange of one ALI-capable handset for another and subscriber churn is more likely to involve a customer with an ALI-capable handset, slowing overall improvement in the penetration rate.
- Customer Resistance. NENA references the Commission's own acknowledgement that some subscribers "may wish to continue use of their non-ALI capable handsets, even if newer handsets provide location as well as other features."³² APCO expresses concern, however, for the feasibility of "measuring or verifying [customers'] 'resistance'" to handset upgrades. As noted above Alltel has, in fact, demonstrated a direct correlation between low usage subscribers and customers with non-compliant handsets, as well as customers who prefer to remain with analog handsets as described below.³³ Alltel

(...continued)

²⁷ NENA at 3.

²⁸ See Alltel Petition at 8-9.

²⁹ See NENA at 3.

³⁰ See APCO at 3; Alltel Petition at 7-8, Exhibit J.

³¹ See Alltel Petition at 7-8, Exhibit J.

³² NENA at 3 (citing *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd. 17442, ¶ 36 (2000)).

³³ See APCO at 3-4; Alltel Petition at 8-9.

submits that given its extensive, targeted promotional efforts (see discussion *supra*), these customers' resistance to upgrades can be reasonably presumed.

- Analog Subscribers. APCO notes that “subscriber reliance on three-watt analog units in rural areas may also be a valid consideration for some carriers” on a case-by-case basis.³⁴ In this regard, in their comments in support of the CTIA/RCA petition, NARUC and the South Dakota Public Utilities Commission (“SDPUC”) express concern regarding the impact that strict adherence would have on analog customers.³⁵ NARUC in particular urges an extension of the rule until 2008, when Part 22 cellular licensees’ analog service obligation sunsets. NARUC explains that “[r]ural residents with three watt analog phones are unlikely to want to exchange them for digital phones that frequently offer less coverage”³⁶ This has been a relevant issue which became even more acute for Alltel when it merged with Western Wireless this year.³⁷
- PSAP Readiness. NENA, NARUC and the SDPUC all acknowledge that PSAP capabilities are a relevant factor for Commission consideration.³⁸ Alltel does not believe a lack of PSAP readiness obviates a carrier’s obligation to exercise good faith efforts to attempt to comply. Alltel’s particular circumstances – its low churn, affirmative efforts, and rural territories – in and of themselves merit grant of its waiver request independent of and beyond PSAP readiness. Alltel views PSAP readiness as a material factor in assessing the impact of a waiver on the Commission’s Phase II public interest objectives and the prospect of any public harm. In this connection, Alltel has evaluated its Phase II deployment and noted in its Petition that fewer than 25 percent of the PSAPs in its coverage area will be Phase II-capable by December 31, 2005 (and only 17 percent in all of Kansas were capable as of October 2005).

Further, Alltel notes here the findings of a report commissioned by NENA in 2003:

Strict enforcement of handset-penetration mandates would likely result in the unintended consequence of forcing consumers who have not already voluntarily upgraded their handsets to surrender their legacy handsets, which would be a net disservice to public safety and policy goals, and create a potential for consumer backlash in areas where PSAPs have not deployed.³⁹

³⁴ See APCO at 4.

³⁵ See South Dakota Public Utilities Commission Comments in WT Docket No. 05-288, filed Oct. 18, 2005, at 2-4; NARUC Comments in WT Docket No. 05-288, filed Oct. 17, 2005, at 2-5.

³⁶ See NARUC CTIA/RCA Comments at 3-4.

³⁷ See Alltel Petition at 8-9, n.14.

³⁸ See NENA at 4; NARUC CTIA/RCA Comments at 3-4; SDPUC CTIA/RCA Comments at 4-5.

³⁹ See Monitor Group Report, *Analysis of the E9-1-1 Challenge* (Dec. 2003).

Finally, the comments are consistent with (and in no way undermine) Alltel's demonstration that it has met the standards for waiver under the Commission's E911 policies. Alltel has demonstrated that it has "undertake[n] steps necessary to come as close as possible to" and established "a clear path to full compliance" with the 95 Percent Penetration Rule.⁴⁰ No commenter offers Alltel-specific reasons to dispute whether Alltel merits relief from the rule, and the detailed fact-specific showing of the Petition underscores the extraordinary circumstances confronting Alltel.

CONCLUSION

Comments on Alltel's request for limited waiver of the 95 Percent Penetration Rule reflect a strong record among both public safety and industry that Alltel has demonstrated circumstances that warrant relief. For the reasons discussed herein and in the Alltel Petition, relief for the full 18 months requested in the Alltel Petition is consistent with the public interest.

Respectfully submitted,

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October 31, 2005

⁴⁰ See Alltel Petition at 9-18.

CERTIFICATE OF SERVICE

I, Glenn S. Rabin, hereby certify that on this 31st day of October, 2005, I caused copies of the foregoing Alltel Corporation Reply Comments to be sent via first class U.S. mail to the following:

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